

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 28, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMBER R.,¹

Plaintiff,

vs.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:20-cv-03115-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 18, 19

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

² Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Before the Court are the parties' cross-motions for summary judgment. ECF
2 Nos. 18, 19. The Court, having reviewed the administrative record and the parties'
3 briefing, is fully informed. For the reasons discussed below, the Court grants
4 Plaintiff's motion, ECF No. 18, and denies Defendant's motion, ECF No. 19.

5 JURISDICTION

6 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
7 1383(c)(3).

8 STANDARD OF REVIEW

9 A district court's review of a final decision of the Commissioner of Social
10 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
11 limited; the Commissioner's decision will be disturbed "only if it is not supported
12 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
13 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
14 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
15 (quotation and citation omitted). Stated differently, substantial evidence equates to
16 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
17 citation omitted). In determining whether the standard has been satisfied, a
18 reviewing court must consider the entire record as a whole rather than searching
19 for supporting evidence in isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
3 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
4 rational interpretation, [the court] must uphold the ALJ’s findings if they are
5 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
6 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §§
7 404.1502(a), 416.920(a). Further, a district court “may not reverse an ALJ’s
8 decision on account of an error that is harmless.” *Id.* An error is harmless “where
9 it is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at
10 1115 (quotation and citation omitted). The party appealing the ALJ’s decision
11 generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*,
12 556 U.S. 396, 409-10 (2009).

13 FIVE-STEP EVALUATION PROCESS

14 A claimant must satisfy two conditions to be considered “disabled” within
15 the meaning of the Social Security Act. First, the claimant must be “unable to
16 engage in any substantial gainful activity by reason of any medically determinable
17 physical or mental impairment which can be expected to result in death or which
18 has lasted or can be expected to last for a continuous period of not less than twelve
19 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
20 impairment must be “of such severity that he is not only unable to do his previous

1 work[,] but cannot, considering his age, education, and work experience, engage in
2 any other kind of substantial gainful work which exists in the national economy.”
3 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

4 The Commissioner has established a five-step sequential analysis to
5 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
6 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
7 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
8 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(b), 416.920(b).

11 If the claimant is not engaged in substantial gainful activity, the analysis
12 proceeds to step two. At this step, the Commissioner considers the severity of the
13 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
14 claimant suffers from “any impairment or combination of impairments which
15 significantly limits [his or her] physical or mental ability to do basic work
16 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
17 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
18 however, the Commissioner must find that the claimant is not disabled. *Id.*

19 At step three, the Commissioner compares the claimant’s impairment to
20 severe impairments recognized by the Commissioner to be so severe as to preclude

1 a person from engaging in substantial gainful activity. 20 C.F.R. §§
2 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
3 severe than one of the enumerated impairments, the Commissioner must find the
4 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

5 If the severity of the claimant's impairment does not meet or exceed the
6 severity of the enumerated impairments, the Commissioner must pause to assess
7 the claimant's "residual functional capacity." Residual functional capacity (RFC),
8 defined generally as the claimant's ability to perform physical and mental work
9 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
10 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
11 analysis.

12 At step four, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing work that he or she has performed in
14 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
15 If the claimant is capable of performing past relevant work, the Commissioner
16 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
17 If the claimant is incapable of performing such work, the analysis proceeds to step
18 five.

19 At step five, the Commissioner considers whether, in view of the claimant's
20 RFC, the claimant is capable of performing other work in the national economy.

20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that 1) the claimant is capable of performing other work; and 2) such work "exists in significant numbers in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ'S FINDINGS

On October 4, 2016, Plaintiff applied for Title II disability insurance benefits and on December 19, 2016, she applied for Title XVI supplemental security income benefits, alleging a disability onset date of August 1, 2013 in both applications. Tr. 15, 103, 208-25. The applications were denied initially and on reconsideration. Tr. 128-30, 132-45. Plaintiff appeared before an administrative

1 law judge (ALJ) on May 9, 2019. Tr. 40-94. On July 19, 2019, the ALJ denied
2 Plaintiff's claim. Tr. 12-37.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff,
4 who met the insured status requirements through September 30, 2018, has not
5 engaged in substantial gainful activity since August 1, 2013. Tr. 18. At step two,
6 the ALJ found that Plaintiff has the following severe impairments:
7 pelvic/abdominal conditions including endometriosis and status-post multiple
8 surgeries; depressive disorder; anxiety disorder; substance use disorder; and a
9 bladder condition (characterized as interstitial cystitis). *Id.*

10 At step three, the ALJ found Plaintiff does not have an impairment or
11 combination of impairments that meets or medically equals the severity of a listed
12 impairment. Tr. 19. The ALJ then concluded that Plaintiff has the RFC to perform
13 light work with the following limitations:

14 [Plaintiff] is limited to frequent climbing of ramps and stairs; no
15 climbing ladders, ropes, or scaffolds; occasional stooping; frequent
16 kneeling, crouching and crawling; simple, routine tasks; in a routine
work environment with simple work related decisions; and only
superficial interaction with co-workers and public.

17 Tr. 21.

18 At step four, the ALJ found Plaintiff is unable to perform any of her past
19 relevant work. Tr. 28. At step five, the ALJ found that, considering Plaintiff's
20 age, education, work experience, RFC, and testimony from the vocational expert,

1 there were jobs that existed in significant numbers in the national economy that
2 Plaintiff could perform, such as labeler, merchandise marker, and
3 housekeeper/maid. Tr. 29. The ALJ further found that if the RFC were reduced to
4 sedentary work with the same non-exertional limitations, there were jobs that
5 existed in significant number in the national economy that Plaintiff could perform,
6 such as table worker, toy stuffer, and rubber roller grinder. Tr. 29. Therefore, the
7 ALJ concluded Plaintiff was not under a disability, as defined in the Social
8 Security Act, from the alleged onset date of August 1, 2013, through the date of the
9 decision. Tr. 30.

10 On June 10, 2020, the Appeals Council denied review of the ALJ's decision,
11 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes
12 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

13 ISSUES

14 Plaintiff seeks judicial review of the Commissioner's final decision denying
15 her disability insurance benefits under Title II and supplemental security income
16 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
17 issues for review:

- 18 1. Whether the ALJ conducted a proper step-three analysis;
- 19 2. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 20 3. Whether the ALJ properly evaluated the medical opinion evidence.

1 ECF No. 18 at 2.

2 DISCUSSION

3 A. Step Three

4 Plaintiff contends the ALJ erred in failing to find Plaintiff's impairments
5 meet or equal Listing 5.08. ECF No. 18 at 3-5. At step three, the ALJ must
6 determine if a claimant's impairments meet or equal a listed impairment. 20
7 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

8 The Listing of Impairments "describes for each of the major body systems
9 impairments [which are considered] severe enough to prevent an individual from
10 doing any gainful activity, regardless of his or her age, education or work
11 experience." 20 C.F.R. §§ 404.1525, 416.925. "Listed impairments are
12 purposefully set at a high level of severity because 'the listings were designed to
13 operate as a presumption of disability that makes further inquiry unnecessary.'" *Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*,
14 493 U.S. 521, 532 (1990)). "Listed impairments set such strict standards because
15 they automatically end the five-step inquiry, before residual functional capacity is
16 even considered." *Kennedy*, 738 F.3d at 1176. If a claimant meets the listed
17 criteria for disability, she will be found to be disabled. 20 C.F.R. §§
18 404.1520(a)(4)(iii), 416.920(a)(4)(iii).
19
20

1 “To *meet* a listed impairment, a claimant must establish that he or she meets
2 each characteristic of a listed impairment relevant to his or her claim.” *Tackett*,
3 180 F.3d at 1099 (emphasis in original); 20 C.F.R. §§ 404.1525(d), 416.925(d).
4 “To *equal* a listed impairment, a claimant must establish symptoms, signs and
5 laboratory findings ‘at least equal in severity and duration’ to the characteristics of
6 a relevant listed impairment” *Tackett*, 180 F.3d at 1099 (emphasis in original)
7 (quoting 20 C.F.R. § 404.1526(a)). “If a claimant suffers from multiple
8 impairments and none of them individually meets or equals a listed impairment,
9 the collective symptoms, signs and laboratory findings of all of the claimant’s
10 impairments will be evaluated to determine whether they meet or equal the
11 characteristics of any relevant listed impairment.” *Id.* However, “[m]edical
12 equivalence must be based on medical findings,” and “[a] generalized assertion of
13 functional problems is not enough to establish disability at step three.” *Id.* at 1100
14 (quoting 20 C.F.R. § 404.1526(a)).

15 The claimant bears the burden of establishing her impairment (or
16 combination of impairments) meets or equals the criteria of a listed impairment.
17 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). “An adjudicator’s
18 articulation of the reason(s) why the individual is or is not disabled at a later step in
19 the sequential evaluation process will provide rationale that is sufficient for a
20 subsequent reviewer or court to determine the basis for the finding about medical

1 equivalence at step 3.” Social Security Ruling (SSR) 17-2P, 2017 WL 3928306, at
2 *4 (effective March 27, 2017).

3 Here, the ALJ found that Plaintiff’s impairments and combinations of
4 impairments did not meet or equal any listings. Tr. 19-20. The ALJ did not
5 specifically address Listing 5.08. Listing 5.08 is met when a Plaintiff demonstrates
6 “weight loss due to any digestive disorder despite continuing treatment as
7 prescribed, with BMI of less than 17.50 calculated on at least two evaluations at
8 least 60 days apart within a consecutive 6-month period.” 20 C.F.R. § 404, Subpt.
9 P, App. 1, § 5.08. Plaintiff contends she meets or equals Listing 5.08 because she
10 had a BMI of 17.5 or lower at multiple visits during the relevant adjudicative
11 period. ECF No. 18 at 4. Plaintiff had a BMI of 17.5 when she weighed 112
12 pounds. Tr. 454. Plaintiff cites to medical visits when Plaintiff weighed 112
13 pounds or less, and therefore had a BMI of 17.5 or lower, between January 24,
14 2014 through April 26, 2016. ECF No. 18 at 4. The November 14, 2014 and
15 January 20, 2015 visits satisfy the requirement that the evaluations be at least 60
16 days apart within a consecutive 60-month period. Tr. 348, 482.

17 However, Plaintiff does not cite to any evidence that demonstrates that she
18 had weight loss due to a digestive disorder, despite prescribed treatment. At the
19 visits where Plaintiff had a BMI of 17.5 or lower, she was seen for depression,
20 endometriosis, hypothyroidism, dyspareunia, migraines, back pain, and infertility.

Tr. 329, 348, 359, 397, 419, 451, 454, 482, 484, 1291, 1672, 1684, 1697. Some of the visits note Plaintiff had “no significant weight loss.” Tr. 451, 454. Plaintiff argues that the evidence in May of 2016 onward demonstrates Plaintiff had a kink in the sigmoid colon, and she had symptoms including constipation, nausea, and other symptoms, and thus Plaintiff had a “manner of digestive disorder.” ECF No. 18 at 3-4 (citing Tr. 416, 508, 848). There are no opinions in the record that link any digestive disorder symptoms to her weight loss, and the evidence cited to in 2016 through 2018 that shows improvement in Plaintiff’s symptoms and BMI does not provide a causal explanation for her low BMI in 2014 through April 2016. Further, the evidence Plaintiff relies on that documents Plaintiff treatment in April 2016 onward demonstrates that with treatment Plaintiff consistently had a BMI above 17.5, which indicates that Plaintiff would not meet the listing. Tr. 441, 448, 451, 552, 555, 585, 659, 779, 861. Plaintiff has not met her burden in demonstrating she meets Listing 5.08.

Plaintiff argues she equals the listing, because she had a low BMI and she later had nausea, vomiting, and a sigmoid kink. ECF No. 20 at 2-3. Again, Plaintiff does not demonstrate that she had weight loss due to any of these symptoms. Plaintiff also does not demonstrate that she had weight loss despite prescribed treatment. Plaintiff argues she was seen for pain medication and underwent surgeries for her abdominal pain. *Id.* (citing Tr. 325, 341, 391, 427,

471, 473). While Plaintiff took pain medication, there is no evidence the pain medication nor surgery was treating any condition that caused her to lose weight. Tr. 325, 342, 391, 427, 471, 473. Plaintiff has not met her burden in demonstrating her impairments equaled Listing 5.08. Plaintiff is not entitled to remand on these grounds.

B. Plaintiff's Symptom Claims

Plaintiff faults the ALJ for failing to rely on reasons that were clear and convincing in discrediting her symptom claims. ECF No. 18 at 5-16. An ALJ engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the

1 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
2 omitted). General findings are insufficient; rather, the ALJ must identify what
3 symptom claims are being discounted and what evidence undermines these claims.
4 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*
5 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
6 explain why it discounted claimant’s symptom claims)). “The clear and
7 convincing [evidence] standard is the most demanding required in Social Security
8 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
9 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

10 Factors to be considered in evaluating the intensity, persistence, and limiting
11 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
12 duration, frequency, and intensity of pain or other symptoms; 3) factors that
13 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
14 side effects of any medication an individual takes or has taken to alleviate pain or
15 other symptoms; 5) treatment, other than medication, an individual receives or has
16 received for relief of pain or other symptoms; 6) any measures other than treatment
17 an individual uses or has used to relieve pain or other symptoms; and 7) any other
18 factors concerning an individual’s functional limitations and restrictions due to
19 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
20 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in

1 an individual's record," to "determine how symptoms limit ability to perform
2 work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found that Plaintiff's medically determinable impairments could
4 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
5 statements concerning the intensity, persistence, and limiting effects of her
6 symptoms were not entirely consistent with the evidence. Tr. 22.

7 *1. Improvement with Treatment*

8 The ALJ found Plaintiff's symptom claims were inconsistent with her
9 improvement with treatment. Tr. 22-26. The effectiveness of treatment is a
10 relevant factor in determining the severity of a claimant's symptoms. 20 C.F.R. §§
11 404.1529(c)(3), 416.929(c)(3) (2011); *Warre v. Comm'r of Soc. Sec. Admin.*, 439
12 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions effectively controlled
13 with medication are not disabling for purposes of determining eligibility for
14 benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing
15 that a favorable response to treatment can undermine a claimant's complaints of
16 debilitating pain or other severe limitations).

17 The ALJ found Plaintiff had improvement in her symptoms with surgery and
18 medication. Tr. 22. Plaintiff reported improvement in her pain with gabapentin in
19 2015, though the improvement reportedly ended. *Id.* (citing Tr. 402-03). Plaintiff
20 had a good result from a surgery for her endometriosis in 2014, and she reported in

1 2015 that her endometriosis was no longer causing pain. Tr. 22 (citing Tr. 348,
2 473-74). Plaintiff had no complications following surgery to remove her left ovary
3 in 2016, and around the same time, Plaintiff reported her pain and urinary
4 urgency/frequency had significantly improved with changes to her diet. Tr. 22
5 (citing Tr. 431). Plaintiff underwent another endometriosis excision and an
6 appendectomy in 2017. Tr. 23 (citing Tr. 508). Despite ongoing complaints of
7 pain, Plaintiff's provider noted her endometriosis was essentially gone and the
8 cystoscopy and urodynamics procedures were normal. Tr. 23 (citing 562-63,
9 1041). Plaintiff described her pain as well-controlled in November 2017, with 70
10 percent pain relief with medication, and she reported good response to hydro-
11 distention in 2018. Tr. 23 (citing Tr. 574, 593, 846-47, 1059). In 2018, Plaintiff
12 reported improvement with treatment but stated the symptoms return before her
13 next appointment. Tr. 611. Regarding her mental health symptoms, Plaintiff's
14 mood was noted as managed on medication, Plaintiff reported tolerating
15 Clonazepam, and she generally had normal mental status examinations. Tr. 26,
16 808, 811, 826, 1492.

17 Plaintiff contends the ALJ erred because although she had some
18 improvement in individual impairments with treatment, she had multiple
19 impairments that caused ongoing limitations despite treatment. ECF No. 18 at 5-6.
20 However, the ALJ reasonably found Plaintiff's complaints are inconsistent with

1 her improvement with treatment. Medical providers noted that the diagnostic
2 findings do not support Plaintiff's reported level of pain and distress, Tr. 323, and
3 her endometriosis was found to be "essentially gone" after her surgery in 2017, Tr.
4 1035. Although Plaintiff continued to report pain symptoms, her provider noted in
5 2018 that there are likely underlying psychological factors that need to be treated.
6 Tr. 1791. Despite her complaints of ongoing abdominal pain, no distinct cause
7 was found in October 2018. Tr. 647. The reports of ongoing pain were often
8 associated with requests for pain medication, as discussed *infra*.

9 On this record, the ALJ reasonably concluded that Plaintiff's impairments
10 when treated were not as limiting as Plaintiff claimed. This finding is supported by
11 substantial evidence and was a clear and convincing reason to discount Plaintiff's
12 symptoms complaints.

13 2. Drug-Seeking Behavior

14 The ALJ found Plaintiff engaged in drug-seeking behavior. Tr. 24. Drug
15 seeking behavior can be a clear and convincing reason to discount a claimant's
16 credibility. *See Edlund*, 253 F.3d at 1157 (holding that evidence of drug seeking
17 behavior undermines a claimant's credibility); *Gray v. Comm'r, of Soc. Sec.*, 365
18 F. App'x 60, 63 (9th Cir. 2010) (evidence of drug-seeking behavior is a valid
19 reason for finding a claimant not credible); *Lewis v. Astrue*, 238 F. App'x 300, 302
20 (9th Cir. 2007) (inconsistency with the medical evidence and drug-seeking

1 behavior sufficient to discount credibility); *Morton v. Astrue*, 232 F. App'x 718,
2 719 (9th Cir. 2007) (drug-seeking behavior is a valid reason for questioning a
3 claimant's credibility).

4 The ALJ found Plaintiff's complaints of chronic pain were overshadowed by
5 the drug seeking behavior demonstrated in the record. Tr. 24. A medical provider
6 in 2011 noted they were concerned about Plaintiff's narcotic use. *Id.* (citing Tr.
7 1052). Plaintiff was cautioned in October 2013 to use her pain medications
8 judiciously. Tr. 24 (citing Tr. 384). In March 2014, Plaintiff was diagnosed with
9 physiologic dependence on pain medication, and she was repeatedly advised in
10 2014 and 2015 that trying to conceive while using Oxycodone could put a fetus at
11 risk. Tr. 34 (citing Tr. 348, 366, 370). Plaintiff reported withdrawal symptoms in
12 July 2014 when she reported losing most of her medication in a toilet. Tr. 24
13 (citing Tr. 358). In October 2015, a provider stated Plaintiff's pain may be an
14 addiction issue and tapering off opioids was discussed. Tr. 24 (citing Tr. 388).
15 Plaintiff's requests for extra medication were denied on multiple occasions, and
16 she could not get her Oxycodone refilled in August 2018 due to her ongoing
17 marijuana use. Tr. 24-25 (citing Tr. 330, 76, 879). The ALJ also noted Plaintiff
18 was untruthful with providers or failed to follow medication instructions, including
19 failing to bring in a pill bottle for a pill count. Tr. 24-25 (citing Tr. 443-46).
20 Plaintiff reported she may need to seek help for her pain pill dependence but did

1 not seek treatment. Tr. 25 (citing Tr. 1493). In June and July 2017, Plaintiff
2 sought emergency care and left when she could not get narcotics. Tr. 25 (citing Tr.
3 1592, 1604). Plaintiff was argumentative with staff when denied opiates. Tr. 25
4 (citing Tr. 647-49, 1790-95). Plaintiff also declined other forms of treatment for
5 her pain, and instead repeatedly requested opiate medication. Tr. 25 (citing Tr.
6 1399). Medical providers have documented their concern regarding Plaintiff's
7 behaviors. *See* Tr. 1399.

8 Plaintiff argues the ALJ erred because there is not sufficient evidence of
9 drug seeking to completely discount Plaintiff's allegations and contends some of
10 the records cited to by the ALJ do not demonstrate drug seeking. ECF No. 18 at
11 10-13. Plaintiff also argues her husband has never been documented as drug-
12 seeking, and her husband repeatedly requested pain medication for her and stated
13 she may commit suicide without the medication, which supports Plaintiff's
14 argument the medication was necessary. ECF No. 18 at 13 (citing Tr. 1603-04,
15 1794). However, the ALJ cited to multiple incidences where providers believed
16 Plaintiff was drug-seeking. There is also evidence of Plaintiff's husband's
17 inappropriate behavior related to his requests for medication for Plaintiff. Tr. 1523
18 (husband was belligerent on the phone and hung up on staff); Tr. 1636-37
19 (husband demanded medication and yelled at staff); Tr. 1603, 1792 (husband
20 cursed at staff and upset at denial of medication); Tr. 1581 (husband yelled at staff

1 regarding pain medication). Providers have documented Plaintiff giving evasive,
2 inconsistent answers, becoming tearful, disrespectful, and angry when she is not
3 given pain medication, refusing non-opiate medication, leaving against medical
4 advice when she was denied pain medication, and having tachycardia and
5 tongue/jaw tremors that were concerning indications of opiate dependence. Tr.
6 649-51, 1591, 1792.

7 On this record, the ALJ reasonably found there is evidence of Plaintiff drug-
8 seeking. This was a clear and convincing reason, supported by substantial
9 evidence, to reject Plaintiff's symptom claims.

10 3. *Lack of Treatment*

11 The ALJ found Plaintiff's symptom claims were inconsistent with Plaintiff's
12 lack of treatment. Tr. 25-26. An unexplained, or inadequately explained, failure to
13 seek treatment or follow a prescribed course of treatment may be considered when
14 evaluating the claimant's subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638
15 (9th Cir. 2007). And evidence of a claimant's self-limitation and lack of
16 motivation to seek treatment are appropriate considerations in determining the
17 credibility of a claimant's subjective symptom reports. *Osenbrock v. Apfel*, 240
18 F.3d 1157, 1165-66 (9th Cir. 2001); *Bell-Shier v. Astrue*, 312 F. App'x 45, *3 (9th
19 Cir. 2009) (unpublished opinion) (considering why plaintiff was not seeking
20 treatment). When there is no evidence suggesting that the failure to seek or

1 participate in treatment is attributable to a mental impairment rather than a
2 personal preference, it is reasonable for the ALJ to conclude that the level or
3 frequency of treatment is inconsistent with the alleged severity of complaints.
4 *Molina*, 674 F.3d at 1113-14. But when the evidence suggests lack of mental
5 health treatment is partly due to a claimant's mental health condition, it may be
6 inappropriate to consider a claimant's lack of mental health treatment when
7 evaluating the claimant's failure to participate in treatment. *Nguyen v. Chater*, 100
8 F.3d 1462, 1465 (9th Cir. 1996).

9 While Plaintiff alleges disability in part due to her mental health conditions,
10 the ALJ found Plaintiff's allegations were inconsistent with Plaintiff's lack of
11 ongoing mental health treatment. Tr. 25-26. Plaintiff participated in mental health
12 services prior to her alleged onset date, but the services ended prior to the relevant
13 time period; she was repeatedly encouraged to seek mental health treatment in
14 2015, but Plaintiff did not re-establish mental health care until May 2017. *Id.*, Tr.
15 1469. Plaintiff was seen from May through July 2017, when she was told her case
16 was going to be closed due to her lack of contact. Tr. 26 (citing Tr. 1544).
17 Plaintiff again saw a mental health provider in 2018, but Plaintiff terminated
18 services after five months of counseling at the clinic, when the clinic would not
19 prescribe more pain medication. Tr. 885. Plaintiff argues she sought treatment
20 because her mental health conditions were managed through her primary care

1 providers, and her mental health was primarily impacted by her chronic pain, thus
2 pain treatment was her focus. ECF No. 18 at 9. Plaintiff does not offer any
3 explanations for why she did not seek mental health treatment for several years
4 despite recommendations to do so, and why she terminated services in 2017.
5 Plaintiff does not contend her mental health symptoms interfered with her ability to
6 seek services. The ALJ's finding that Plaintiff's allegations were inconsistent with
7 her lack of treatment is a clear and convincing reason, supported by substantial
8 evidence, to reject Plaintiff's claims.

9 *4. Inconsistent Objective Medical Evidence*

10 The ALJ found Plaintiff's symptom claims were inconsistent with the
11 objective medical evidence. Tr. 22-26. An ALJ may not discredit a claimant's
12 symptom testimony and deny benefits solely because the degree of the symptoms
13 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
14 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
15 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.
16 However, the objective medical evidence is a relevant factor, along with the
17 medical source's information about the claimant's pain or other symptoms, in
18 determining the severity of a claimant's symptoms and their disabling effects.
19 *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).

1 First, the ALJ found Plaintiff's pain allegations were inconsistent with the
2 objective medical evidence. Tr. 22-26. The records demonstrate some
3 improvement with treatment, as discussed *supra*. Tr. 22-23. A 2016 cystoscopy
4 was normal. Tr. 23 (citing Tr. 419). In August 2017, Plaintiff reported ongoing
5 pain, but the medical records note Plaintiff's endometriosis was essentially gone.
6 Tr. 23 (citing Tr. 1035). Plaintiff's cystoscopy and urodynamics procedures were
7 also normal. Tr. 23 (citing Tr. 14F, 1041). Despite her complaints of disabling
8 pain, Plaintiff generally had normal strength, range of motion, and gait, although
9 she reported tenderness. Tr. 24, 448, 1409, 1141, 1597, 448, 599, 605, 1062. At
10 multiple visits where Plaintiff reported high levels of pain, there were few
11 abnormal findings on examination. Tr. 24 (citing Tr. 800-6). While Plaintiff
12 offers an alternative interpretation of the evidence, the Court may not reverse the
13 ALJ's decision based on Plaintiff's disagreement with the ALJ's interpretation of
14 the record. *See Tommasetti*, 533 F.3d at 1038 ("[W]hen the evidence is susceptible
15 to more than one rational interpretation" the court will not reverse the ALJ's
16 decision).

17 Second, the ALJ found Plaintiff's allegation that she has flare-ups that
18 would cause absenteeism due to a need to lie down was inconsistent with the
19 evidence. Tr. 26. The ALJ noted Plaintiff did not frequently miss, cancel, or
20 reschedule appointments. *Id.* Plaintiff argues her ability to attend an appointment

1 for one to two hours every month is not inconsistent with an inability to maintain
2 full-time attendance at work, ECF No. 18 at 9, however Plaintiff does not point to
3 any evidence of her need to lie down.

4 Third, the ALJ found Plaintiff's claims of disabling limitations were
5 inconsistent with her efforts to have a baby during the relevant period. Tr. 26. The
6 ALJ does not set forth an analysis as to how Plaintiff's desire to have a baby is
7 inconsistent with her allegations. Any err in finding Plaintiff's claims were
8 inconsistent with her efforts to get pregnant is harmless as the ALJ gave other
9 supported reasons to reject Plaintiff's allegations. *See Molina*, 674 F.3d at 1115.

10 On this record, the ALJ reasonably concluded that Plaintiff's symptom
11 claims were inconsistent with the objective medical evidence. This finding is
12 supported by substantial evidence and was a clear and convincing reason, along
13 with the other reasons offered, to discount Plaintiff's symptom complaints.

14 **C. Medical Opinion Evidence**

15 Plaintiff contends the ALJ erred in rejecting the opinions of Derek
16 Leinenbach, M.D.; Joan Harding, M.D.; Myrna Palasi, M.D.; and Jenny Rainey-
17 Gibson, LMFT. ECF No. 18 at 16-21.

18 There are three types of physicians: "(1) those who treat the claimant
19 (treating physicians); (2) those who examine but do not treat the claimant
20 (examining physicians); and (3) those who neither examine nor treat the claimant

1 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
2 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
3 Generally, a treating physician's opinion carries more weight than an examining
4 physician's, and an examining physician's opinion carries more weight than a
5 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
6 to opinions that are explained than to those that are not, and to the opinions of
7 specialists concerning matters relating to their specialty over that of
8 nonspecialists." *Id.* (citations omitted).

9 If a treating or examining physician's opinion is uncontradicted, the ALJ
10 may reject it only by offering "clear and convincing reasons that are supported by
11 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
12 "However, the ALJ need not accept the opinion of any physician, including a
13 treating physician, if that opinion is brief, conclusory and inadequately supported
14 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
15 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
16 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
17 may only reject it by providing specific and legitimate reasons that are supported
18 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
19 31). The opinion of a nonexamining physician may serve as substantial evidence if

1 it is supported by other independent evidence in the record. *Andrews v. Shalala*,
2 53 F.3d 1035, 1041 (9th Cir. 1995).

3 “Only physicians and certain other qualified specialists are considered
4 ‘[a]cceptable medical sources.’” *Ghanim*, 763 F.3d at 1161 (alteration in original);
5 *see* 20 C.F.R. § 416.902 (2011)³ (citing to 20 C.F.R. § 416.913(a)) (acceptable
6 medical sources are licensed physicians, licensed or certified psychologists,
7 licensed optometrists, licensed podiatrists, and qualified speech-language
8 pathologists)). However, an ALJ is required to consider evidence from non-
9 acceptable medical sources, such as therapists. 20 C.F.R. § 416.927(f). An ALJ
10 may reject the opinion of a non-acceptable medical source by giving reasons
11 germane to the opinion. *Ghanim*, 763 F.3d at 1161.

12 *1. Dr. Leinenbach*

13 On January 24, 2019, Dr. Leinenbach, a reviewing source, reviewed some of
14 Plaintiff’s medical records and rendered an opinion on Plaintiff’s functioning. Tr.

15
16 ³ This section was amended in 2017, effective March 27, 2017, and in 2018,
17 effective October 15, 2018. *See* 20 C.F.R. § 416.902. Plaintiff filed his/her claim
18 before March 27, 2017, and the Court applies the regulation in effect at the time
19 Plaintiff’s claim was filed. *See* 20 C.F.R. § 416.902 (noting changes apply only for
20 claims filed on or after March 27, 2017).

1 796-97. Dr. Leinenbach opined Plaintiff is limited to a light RFC, but she has
2 marked attendance limitations, and moderate postural limitations. Tr. 796. The
3 ALJ did not address Dr. Leinenbach's opinion. As Dr. Leinenbach is a non-
4 examining source, the ALJ must consider the opinion and whether it is consistent
5 with other independent evidence in the record. *See* 20 C.F.R. §§
6 404.1527(b),(c)(1), 416.927(b),(c)(1); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149
7 (9th Cir. 2001); *Lester*, 81 F.3d at 830-31.

8 Defendant argues the ALJ did not error by failing to address Dr.
9 Leinenbach's opinion because the opinion did not contain any probative evidence,
10 and further any error in the rejection of Dr. Leinenbach's opinion was harmless,
11 because the ALJ gave supported reasons to reject Dr. Palasi and Dr. Harding's
12 opinions, and the same reasoning applies to Dr. Leinenbach's opinion. ECF No.
13 19 at 15-17. However, the ALJ did not offer any analysis of Dr. Leinenbach's
14 opinion, and the ALJ did not consider the consistency of Dr. Leinenbach's opinion
15 with the other opinions, and thus the Court cannot conclude the ALJ would have
16 rejected Dr. Leinenbach's opinion for the same reasons she rejected the other
17 opinions. *See Orn*, 495 F.3d at 630 (The Court will "review only the reasons
18 provided by the ALJ in the disability determination and may not affirm the ALJ on
19 a ground upon which he did not rely."). Further, Dr. Leinenbach's opinion
20 includes a marked limitation, and thus cannot be found harmless.

1 On remand, the ALJ is instructed to consider Dr. Leinenbach's opinion and
2 incorporate the limitation into the RFC or set forth an analysis of the consistency
3 of the opinion with the other evidence.

4 *2. Dr. Harding*

5 On June 5, 2018, Dr. Harding, a treating provider, opined Plaintiff was
6 limited to sedentary work. Tr. 567. The ALJ gave Dr. Harding's opinion little
7 weight. Tr. 27. As Dr. Harding's opinion is contradicted by the opinion of Dr.
8 Koukol, Tr. 109-11, the ALJ was required to give specific and legitimate reasons,
9 supported by substantial evidence, to reject Dr. Harding's opinion. *See Bayliss*,
10 427 F.3d at 1216. As the case is being remanded for the ALJ to consider Dr.
11 Leinenbach's opinion, the ALJ is also instructed to reconsider Dr. Harding's
12 opinion.

13 *3. Dr. Palasi*

14 On October 30, 2016, Dr. Palasi reviewed a medical report and rendered an
15 opinion on Plaintiff's functioning. Tr. 784. Dr. Palasi opined Plaintiff is not
16 capable of even sedentary work due to her endometriosis. *Id.* The ALJ gave Dr.
17 Palasi's opinion little weight. Tr. 27. As Dr. Palasi is a non-examining source, the
18 ALJ must consider the opinion and whether it is consistent with other independent
19 evidence in the record. *See* 20 C.F.R. §§ 404.1527(b),(c)(1), 416.927(b),(c)(1);
20 *Tonapetyan*, 242 F.3d at 1149; *Lester*, 81 F.3d at 830-31. As the case is being

1 remanded for the ALJ to reconsider Dr. Leinenbach's opinion, the ALJ is also
2 instructed to reconsider Dr. Palasi's opinion.

3 *4. Ms. Rainey-Gibson*

4 On May 17, 2018, Ms. Rainey-Gibson, a treating therapist, opined Plaintiff
5 has mild limitations in her ability to carry out very short and simple instructions;
6 moderate limitations in her ability to remember instructions and work-like
7 procedures, sustain ordinary routines, and maintain socially appropriate behavior
8 and adhere to basic standards of neatness; marked limitations in her ability to
9 understand/remember very short and simple instructions, understand/remember
10 detailed instructions, carry out detailed instructions, maintain
11 attention/concentration for extended periods, perform activities within a schedule
12 and maintain attendance, work in coordination or in close proximity to others
13 without being distracted by them, make simple work-related decisions, interact
14 appropriately with the general public, ask simple questions or request assistance,
15 accept instructions and respond appropriately to criticism from supervisors, get
16 along with coworkers or peers without distracting them, respond appropriately to
17 changes in the work setting, be aware of normal hazards and take appropriate
18 precautions, travel to unfamiliar places or take public transportation, and set
19 realistic goals or make plans independently of others; and an extreme limitation in
20 her ability to complete a normal workday/workweek. Tr. 564-66. The ALJ found

1 Ms. Rainey-Gibson's opinion was not supported. Tr. 27. As Ms. Rainey-Gibson
2 is not an acceptable medical source, the ALJ was required to give germane reasons
3 to reject the opinion. *See Ghanim*, 763 F.3d at 1161.

4 First, the ALJ found Ms. Rainey-Gibson provided no explanations for the
5 marked and extreme ratings. *Id.* The Social Security regulations "give more
6 weight to opinions that are explained than to those that are not." *Holohan*, 246
7 F.3d at 1202. "[T]he ALJ need not accept the opinion of any physician, including
8 a treating physician, if that opinion is brief, conclusory and inadequately supported
9 by clinical findings." *Bray*, 554 at 1228. Ms. Rainey-Gibson's opinion is a
10 checkbox form and does not contain any explanation nor citation to records to
11 support her opinion. Tr. 564-66. "Although the treating physician's opinions were
12 in the form of check-box questionnaires, that is not a proper basis for rejecting an
13 opinion supported by treatment notes." *See Garrison*, 759 F.3d at 1014 n. 17.
14 Plaintiff does not present any argument that Ms. Rainey-Gibson's opinion is
15 supported by her treatment notes. ECF No. 18 at 19-21. As discussed *infra*, Ms.
16 Rainey-Gibson's opinion is inconsistent with the treatment records. This was a
17 germane to reject Ms. Rainey-Gibson's opinion.

18 Second, the ALJ found Ms. Rainey-Gibson's opinion was inconsistent with
19 the objective evidence. Tr. 27. A medical opinion may be rejected if it is
20 unsupported by medical findings. *Bray*, 554 F.3d at 1228; *Batson*, 359 F.3d at

1 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan*, 242 F.3d at 1149; *Matney*, 981 F.2d
2 at 1019. Moreover, an ALJ is not obliged to credit medical opinions that are
3 unsupported by the medical source's own data and/or contradicted by the opinions
4 of other examining medical sources. *Tommasetti*, 533 F.3d at 1041. While Ms.
5 Rainey-Gibson opined Plaintiff had multiple marked limitations, such as a marked
6 limitation in understanding/remembering very short and simple instructions, the
7 ALJ found the opinion was inconsistent with the medical records that demonstrate
8 Plaintiff repeatedly had a normal memory. Tr. 27. Ms. Rainey-Gibson's records
9 contain generally normal mental status examinations, including normal, memory,
10 thoughts, intelligence, and concentration, with occasional abnormalities such as an
11 anxious or depressed mood. Tr. 27, 880, 888, 897, 971, 980, 1002, 1007. This
12 was a germane reason to reject Ms. Rainey-Gibson's opinion.

13 Third, the ALJ found Ms. Rainey-Gibson's opinion was inconsistent with
14 Plaintiff's activities of daily living. Tr. 27. An ALJ may discount a medical
15 source opinion to the extent it conflicts with the claimant's daily activities.
16 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999).
17 Additionally, the ability to care for young children without help has been
18 considered an activity that may undermine claims of totally disabling pain.
19 *Rollins*, 261 F.3d at 857. However, an ALJ must make specific findings before
20 relying on childcare as an activity inconsistent with disabling limitations. *Trevizo*

1 *v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017). The ALJ found Ms. Rainey-
2 Gibson’s opinion that Plaintiff had marked limitations in several areas of
3 functioning, including concentration and social interaction, was inconsistent with
4 Plaintiff’s ability to provide childcare for a friend’s infant, and help care for her
5 father after he had a stroke. Tr. 27. However, the ALJ did not make any findings
6 regarding the extent of care provided. While the ALJ erred in rejecting the opinion
7 as inconsistent with Plaintiff’s activities, the error is harmless as the ALJ gave
8 other supported reasons to reject the opinion. *See Molina*, 674 F.3d at 1115. The
9 ALJ did not error in rejecting Ms. Rainey-Gibson’s opinion.

10 **D. Remedy**

11 Plaintiff urges this Court to remand for an immediate award of benefits.
12 ECF No. 18 at 21.

13 “The decision whether to remand a case for additional evidence, or simply to
14 award benefits is within the discretion of the court.” *Sprague v. Bowen*, 812 F.2d
15 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*, 761 F.2d 530 (9th Cir. 1985)).
16 When the Court reverses an ALJ’s decision for error, the Court “ordinarily must
17 remand to the agency for further proceedings.” *Leon v. Berryhill*, 880 F.3d 1041,
18 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“the
19 proper course, except in rare circumstances, is to remand to the agency for
20 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,

1 775 F.3d 1090, 1099 (9th Cir. 2014). However, in a number of Social Security
2 cases, the Ninth Circuit has “stated or implied that it would be an abuse of
3 discretion for a district court not to remand for an award of benefits” when three
4 conditions are met. *Garrison*, 759 F.3d at 1020 (citations omitted). Under the
5 credit-as-true rule, where (1) the record has been fully developed and further
6 administrative proceedings would serve no useful purpose; (2) the ALJ has failed
7 to provide legally sufficient reasons for rejecting evidence, whether claimant
8 testimony or medical opinion; and (3) if the improperly discredited evidence were
9 credited as true, the ALJ would be required to find the claimant disabled on
10 remand, the Court will remand for an award of benefits. *Revels v. Berryhill*, 874
11 F.3d 648, 668 (9th Cir. 2017). Even where the three prongs have been satisfied,
12 the Court will not remand for immediate payment of benefits if “the record as a
13 whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759
14 F.3d at 1021.

15 Plaintiff urges remand for immediate benefits based on the arguments that
16 Plaintiff’s impairments meet a listing, and the ALJ erred in rejecting the medical
17 opinions and Plaintiff’s symptom claims. ECF No. 18 at 21. However, the Court
18 finds Plaintiff did not meet her burden in demonstrating her impairments meet or
19 equal a listing, and the ALJ gave clear and convincing reasons to reject Plaintiff’s
20 symptom claims, as discussed *supra*. While the ALJ erred in rejecting Dr.

Harding's opinion, remand for further proceedings is necessary to resolve conflicts in the record, including conflicts between the medical opinions. As such, the case is remanded for further proceedings consistent with this Order.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is not supported by substantial evidence and is not free of harmful legal error. Accordingly, **IT IS HEREBY ORDERED:**

1. The District Court Executive is directed to substitute Kilolo Kijakazi as Defendant and update the docket sheet.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **GRANTED**.

3. Defendant's Motion for Summary Judgment, **ECF No. 19**, is **DENIED**.

4. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff REVERSING and REMANDING the matter to the Commissioner of Social Security for further proceedings consistent with this recommendation pursuant to sentence four of 42 U.S.C. § 405(g).

The District Court Executive is directed to file this Order, provide copies to counsel, and **CLOSE THE FILE**.

DATED December 28, 2021.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE